

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

EDWARD W. MATCHETT,
Bar No. 010057,

Respondent.

PDJ 2016-9003

FINAL JUDGMENT AND ORDER

[State Bar Nos. 15-0088 and 15-0226]

FILED JULY 7, 2016

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on June 24, 2016, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS ORDERED Respondent, **Edward W. Matchett**, is suspended for thirty (30) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective sixty (60) days from the date of this order.

IT IS FURTHER ORDERED Mr. Matchett shall be placed on probation for two (2) years (except as specifically stated otherwise), to include:

1. Mr. Matchett shall participate in the State Bar's Law Office Management Assistance Program ("LOMAP") for two years, the terms of which will include but not be limited to succession/termination planning under Rule 41(i);
2. Mr. Matchett shall obtain a practice monitor for two (2) years, with the provision that a process will be established which involves the practice monitor reviewing

and approving of Mr. Matchett's representation in all new matters, within certain limits, to insure that Respondent: (a) does not accept engagements he cannot handle effectively; and (b) the practice monitor can be aware of any substantial matters and provide effective assistance and oversight;

3. Mr. Matchett shall implement the recommendations included in the Report with Recommendations prepared by Lynda Shely, attached to the consent documents as Exhibit A, within ninety (90) days of reinstatement;
4. Mr. Matchett shall pay restitution in the amount of \$1,800.00 in Count Two to Shane O'Brien and Jeremy Campbell within 90 days; and
5. Mr. Matchett shall complete a minimum of three (3) hours of continuing legal education (CLE) within six (6) months on Rules of Civil Procedure, focusing to the extent available on federal rules relating to motions for summary judgment.

WARNING RE FAILURE TO COMPLY WITH PROBATION

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within thirty (30) days to determine whether Respondent breached a term of probation and, if so, to impose an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED Mr. Matchett shall pay the costs and expenses of the State Bar of Arizona in the amount of \$1,233.60, within thirty (30) days from the date of this order. There are no costs or expenses incurred by the disciplinary clerk

and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings.

DATED this 7th day of July, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing e-mailed this 7th day of July, 2016, and mailed this 8th day of July, 2016, to:

Mark D. Rubin
Law Office of Mark Rubin PLC
405 W Franklin St
Tucson, AZ 85701-8209
Email: mark@markrubinlaw.com
Respondent's Counsel

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: AMcQueen

**BEFORE THE PRESIDING DISCIPLINARY
JUDGE**

IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,

**EDWARD W. MATCHETT,
Bar No. 010057**

Respondent.

PDJ 2016-9003

**DECISION AND ORDER
ACCEPTING DISCIPLINE BY
CONSENT**

[State Bar Nos. 15-0088 and 15-
0226]

FILED JULY 7, 2016

An Agreement for Discipline by Consent was filed on May 18, 2016, and submitted under Rule 57(a)(3), of the Rules of the Arizona Supreme Court. The Agreement was reached after the formal complaint was filed on January 11, 2016. For reasons stated within a June 3, 2016 written decision, the Agreement was rejected. Little was suggested in mitigation and the parties overly relied on an agreement for discipline by consent in a matter involving a different attorney. The parties were afforded an opportunity to file a different agreement.

On June 24, 2016, the parties filed a second Agreement for Discipline by Consent (Agreement). Upon filing such Agreement, the presiding disciplinary judge, "shall accept, reject or recommend modification of the agreement as appropriate". Rule 57 requires admissions be tendered solely "...in exchange for the stated form of discipline...." Under that rule, the right to an adjudicatory hearing is waived only if the "...conditional admission and proposed form of discipline is approved...." If the

Agreement is not accepted those conditional admissions are automatically withdrawn and shall not be used against the parties in any subsequent proceeding.

Under Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this second Agreement and opportunity to file a written objection within five days was provided to the complainant(s) on June 24, 2016. As a result the determination on whether to accept this Agreement could not occur earlier than July 7, 2016. As the Court has not been notified of any objection by the complainants, it is presumed none was submitted to the State Bar.

The Agreement is substantively supported by the evaluation of Lynda C. Shely which is summarized in a report and recommendation filed with the Agreement. That clarifies Mr. Matchett has taken his misdeeds and sought to rectify them with clear actions rather than mere words. The Agreement better establishes remorse and a basis for the mitigation claimed.

IT IS ORDERED, incorporating the Agreement and any supporting documents by this reference. All deadlines and hearings are vacated. The agreed upon sanctions include: thirty (30) day suspension followed by two (2) years probation (LOMAP and a practice monitor). The parties agree Mr. Matchett shall implement and follow the recommendations in the Report and Recommendations of Lynda Shely and pay restitution of \$1,800.00 within ninety (90) days. Mr. Matchett shall also complete a minimum of three (3) hours of CLE as specified within the Agreement. The Agreement and supporting documents are incorporated into this decision by this reference. Costs of \$1,233.60 shall be paid within thirty (30) days.

IT IS ORDERED, the 2nd Agreement is accepted. Costs as submitted are approved. Now therefore, a Final Judgment and Order is signed this date. Mr. Matchett is suspended sixty (60) days from the date of this order.

DATED this 7th day of July, 2016.

William J. O'Neil

William J. O'Neil, Presiding Disciplinary Judge

Copies of the foregoing e-mailed this 7th day of July, 2016, and mailed this 8th day of July, 2016, to:

David L. Sandweiss
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: lro@staff.azbar.org

Mark D. Rubin
Law Office of Mark Rubin PLC
405 W Franklin St
Tucson, AZ 85701-8209
Email: mark@markrubinlaw.com
Respondent's Counsel

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: AMcQueen

David L. Sandweiss, Bar No. 005501
Senior Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7250
Email: LRO@staff.azbar.org

Mark Rubin, Bar No. 007092
Law Office of Mark Rubin PLC
405 W. Franklin St.
Tucson, AZ 85701-8209
Telephone 520-798-3803
Email: mark@markrubinlaw.com
Respondent's Counsel

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,

EDWARD W. MATCHETT,
Bar No. 010057,

Respondent.

PDJ 2016-9003

**AGREEMENT FOR DISCIPLINE BY
CONSENT**

State Bar File Nos. 15-0088 and 15-0226

The State Bar of Arizona through undersigned Bar Counsel, and Respondent Edward W. Matchett who is represented by counsel Mark Rubin, hereby submit their Agreement for Discipline by Consent, pursuant to Rule 57(a), Ariz. R. Sup. Ct.¹ A probable cause order was entered on September 18, 2015, and a formal complaint was filed on January 11, 2016. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

¹ All references herein to rules are to the Arizona Rules of the Supreme Court unless otherwise expressly stated.

Pursuant to Rule 53(b)(3), notice of this agreement is being provided to the complainants either by letter, email, or telephone, on June 24, 2016. Complainants have been notified of the opportunity to file a written objection to the agreement with the State Bar within five (5) business days of bar counsel's notice.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ERs 1.1 (Competence, Count One), 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer, Count Two), 1.3 (Diligence, Counts One and Two), 1.4 (Communication, Counts One and Two), 1.5 (Fees and Fee Agreements, Counts One and Two), 1.15(d) (Failure to Deliver or Account for Client Property, Count Two), 1.16(d) (Terminating Representation, Count Two), 3.1 (Meritorious Claims and Contentions, Count One), ER 3.4(c) (Knowing Violation of a Court Rule, Count One), ER 8.4(d) (Conduct Prejudicial to the Administration of Justice, Count One); and Rule 54(c) (Knowing Violations of any Rule or Order of the Court, Count One). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline:

- 30 day suspension, effective 60 days following the date of the presiding disciplinary judge's ("PDJ") order accepting this Agreement for Discipline by Consent;
- Probation, to include:
 - participation in the State Bar's Law Office Management Assistance Program ("LOMAP") for two years, the terms of which will include but not be limited to succession/termination planning under Rule 41(i);
 - a practice monitor for two (2) years, with the proviso that a process will be established which involves the practice monitor reviewing and approving of Respondent's representation in all new matters, within certain limits, to insure

that Respondent: (a) does not accept engagements he cannot handle effectively; and (b) the practice monitor can be aware of any substantial matters and provide effective assistance and oversight;

- Implementation of the recommendations included in the Report with Recommendations prepared by Lynda Shely, attached as Exhibit A, within 90 days of reinstatement;
- Restitution of \$1,800 in Count Two within 90 days; and
- a minimum of three (3) hours of continuing legal education (CLE) within six (6) months on Rules of Civil Procedure, focusing to the extent available on federal rules relating to motions for summary judgment.

Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of the PDJ's order accepting this Agreement for Discipline by Consent, and if costs are not paid within the 30 days, interest will begin to accrue at the legal rate.² The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit B.

WARNING RE FAILURE TO COMPLY WITH PROBATION

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent breached a term of probation and, if so, to recommend an

² Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on May 18, 1985.

COUNT ONE (File No. 15-0088/Shirley)

2. In December 2011, Complainant Russell J. Shirley retained Respondent to represent him in a wrongful termination case.

3. Mr. Shirley claimed that Integrated Systems Improvement Services, Inc. ("ISIS") fired him for falling asleep on the job in violation of the Americans with Disabilities Act ("ADA").

4. Mr. Shirley asserted that he had a sleep apnea and insomnia-related disability; in 2011 he quit smoking for his New Year's Resolution which aggravated his disability; and twice within a few days in January 2011 he fell asleep at work.

5. Mr. Shirley claimed further that ISIS was required to accommodate him by giving him a chance to obtain medical care to treat his disability, or to find him a different job for which he was qualified that was less likely to put him to sleep.

6. The written fee agreement called for "a flat legal fee ... of \$10,000 ... earned when received" (which Mr. Shirley paid) plus a one-third contingent fee with a \$10,000 credit.

7. Respondent's fee agreement did not contain ER 1.5(d)(3)-compliant language.

8. The "SCOPE OF THE AGREEMENT" committed Respondent to provide "case preparation" and "discovery."

9. Respondent filed a four-count complaint in federal court.

10. ISIS filed a motion to dismiss based on certain pleading deficiencies.

11. Respondent filed an amended complaint consisting of three of the same counts he alleged in the first complaint (ADA discrimination, defamation, and intentional infliction of emotional distress).

12. In the amended complaint Respondent did not correct the deficiencies in the first complaint that prompted ISIS's motion to dismiss.

13. In the defamation count Respondent failed to allege the four elements essential to a claim: a) a statement; b) its falsity; c) publication; and d) causation of harm.

14. On the emotional distress claim Respondent failed to allege facts that, if true, would prove that Mr. Shirley's firing was "extreme and outrageous," "atrocious," or "beyond all bounds of decency;" that the negative impact he suffered constituted "severe emotional distress;" or that ISIS knew its conduct would cause such distress.

15. ISIS filed a motion for judgment on the pleadings.

16. Respondent filed a response in which he addressed only the ADA count.

17. The court ruled that the amended complaint was "flawed" in that Respondent did not allege the specifics essential to a properly pled suit. However, it held that Respondent alleged enough in the ADA count to meet the liberal standard of review on a motion for judgment on the pleadings and the broad statutory construction called for by applicable federal regulations.

18. The court declined to dismiss the ADA count "at this stage in the proceedings."

19. In August 2012, the court dismissed the defamation and emotional distress counts without leave to amend since to do so would be futile and Respondent did not even address those counts in his response to ISIS's motion.

20. In a letter to Mr. Shirley, Respondent termed this outcome "a major victory."

21. Mr. Shirley told Respondent that in his 2008 in-processing with ISIS he told CEO Rob Noone, in assistant John Goodhart's presence, about his disability associated with sleep apnea and insomnia.

22. Mr. Shirley also told Respondent that his disability was noted in his Personnel Information File ("PIF"), and that Mr. Noone did not express any concern about it.

23. Mr. Shirley also told Respondent that in December 2010 he discussed his sleep apnea disability with the General Dynamics (the general contractor) team leader, Pete Sandoval.

24. Respondent alleged as facts in the amended complaint the information that Mr. Shirley told him, described in the three foregoing paragraphs, and alleged that ISIS fired Complainant because of his disability.

25. In its answer ISIS denied that Mr. Shirley had a disability; that it fired him because of his supposed disability; that he told Noone, Goodhart, or Sandoval about his alleged disability; and that his PIF contained any reference to sleep apnea or a claimed disability.

26. Mr. Shirley told Respondent in writing that he had no objective proof or paperwork to prove his case.

27. Mr. Shirley told Respondent where to look for documentary evidence to corroborate his claim: "I think if this goes forward we will have to get proof for all of the complaints from my PIF, Mr. Rob Noone, Mr. John Goodhart ISIS employee hired on the same date I was, Mr. Pete Sandoval, GDIT Task Lead, and Mr. Jeffrey Lawson, GS-11."

28. Over the entire course of the litigation, however, Respondent did not conduct any deposition or documentary discovery.

29. Notwithstanding ISIS's answer, Respondent claimed to be unaware that the three witnesses would deny the discussions Complainant alleged he'd had with them.

30. Discovery closed on May 31, 2013.

31. In July 2013 opposing counsel, Magdalena Osborn, wrote Respondent a letter stating that she interviewed witnesses Noone, Goodhart, and Sandoval, and all denied ever discussing with Mr. Shirley his claimed sleep apnea or disability.

32. Ms. Osborn enclosed signed statements to that effect from each.

33. Ms. Osborn reminded Respondent that ISIS could prove it had non-discriminatory reasons for firing Mr. Shirley (Mr. Shirley had a record of other infractions, General Dynamics ordered ISIS to terminate Mr. Shirley, and General Dynamics terminated his position); that Mr. Shirley concocted his disability claim; and that ISIS was paying its own defense costs because it was not insured for this type of case.

34. Ms. Osborn offered Respondent a walkaway settlement upon threat of seeking Rule 11 sanctions if Mr. Shirley refused to dismiss, and gave Respondent an acceptance deadline of 9:00 a.m. the following day.

35. Mr. Shirley gave Respondent the names of others who knew of his sleep apnea disability - David Zibbon and Scott Pohlman.

36. Mr. Zibbon was a former ISIS employee; Mr. Pohlman formerly worked for General Dynamics. They signed statements that they knew about Mr. Shirley's sleep apnea and disability, and Mr. Zibbon added that he told Pete Sandoval about it.

37. Respondent provided those statements to Ms. Osborn.

38. Ms. Osborn immediately filed a motion to disqualify Respondent based on his alleged illicit *ex parte* contact with Mr. Zibbon in violation of ER 4.2 and *Lang v. Superior Court*, 170 Ariz. 602, 826 P.2d 1228 (App. 1992). Ms. Osborn asked for several other orders including one precluding testimony from the new witnesses, and for sanctions.

39. Respondent filed a response in which he denied violating the ethical rules.

40. Respondent argued that he obtained the two statements as a means of defending against the threatened Rule 11 motion but did not intend to offer the statements or testimony from the witnesses at trial.

41. Rather, Respondent planned to fight Noone, Sandoval, and Goodhart's testimony exclusively with Mr. Shirley's counter-testimony.

42. The court agreed that Respondent did not violate ER 4.2. That rule does not bar counsel from having *ex parte* contacts with a former employee of an opposing party where the former employer is represented by counsel unless the acts or

omissions of the former employee gave rise to the underlying litigation or the former employee has an ongoing relationship with the former employer in connection with the litigation. Neither situation applied to Mr. Zibbon.

43. On the grounds of irrelevance and late disclosure, however, the court ordered the Zibbon and Pohlman statements and testimony precluded from use at trial.

44. The court denied all of Ms. Osborn's other requests.

45. In October 2013, Ms. Osborn filed a motion for summary judgment based on a separate statement of 27 facts supported by 10 exhibits, including Mr. Shirley's deposition.

46. Respondent characterized the motion to Mr. Shirley as a scare tactic and encouraged him to continue with the litigation.

47. Respondent filed an opposing Separate Statement of Facts based entirely on Mr. Shirley's affidavit.

48. Respondent's Separate Statement of Facts violated the court's Local Rule 56.1(b). His 30 separately numbered statements of fact did not correspond to Ms. Osborn's 27 separately numbered statements, and he did not indicate which, if any, of Ms. Osborn's facts he and Mr. Shirley disputed.

49. The court's November 19, 2012 Scheduling Order specifically warned the parties that they must comply with local rules, and to pay "particular attention" to Rule 56.1(b).

50. On Ms. Osborn's objection, the court deemed all of ISIS's asserted facts undisputed for purposes of the motion. It held:

Plaintiffs were clearly apprised of the Court's expectations regarding the briefing requirements for their response to ISIS' Motion for Summary Judgment. Plaintiffs chose to litigate the summary judgment Motion in haphazard fashion. "Judges are not like pigs, hunting for truffles buried in briefs." [citations excluded] Plaintiffs elected not to comply with the rules of this Court, and the Court declines to litigate their case for them.

51. Respondent prepared Mr. Shirley's affidavit but it conflicted with Mr. Shirley's deposition in many important respects.

52. The court excluded from consideration such "sham" testimony.

53. Early in the litigation, ISIS disclosed as exhibits the General Dynamics Information Technology ("GDIT") Memoranda of Records. Respondent identified those same records in his disclosure statement.

54. In responding to ISIS's motion for summary judgment, Mr. Shirley stated in an affidavit, and Respondent argued, that Mr. Shirley never saw those records until they were attached to ISIS's Separate Statement of Facts.

55. Respondent did not share those records with Mr. Shirley when both ISIS and Respondent disclosed them as exhibits earlier in the case.

56. Respondent argued that ISIS falsely portrayed Mr. Shirley to the court through a dilatory disclosure. The court rejected that claim.

57. To succeed in his ADA claim, Mr. Shirley had to prove he was disabled by being substantially limited in the major life activity of sleeping.

58. The only fact Respondent offered on this point was an entry in Mr. Shirley's affidavit that as a result of quitting smoking he experienced increased sleep disruption causing insomnia.

59. Although Mr. Shirley was diagnosed with sleep apnea in 2007, he claimed that he was not bothered by it until he quit smoking.

60. The court determined that there was no issue of material fact on Mr. Shirley's claim that he was disabled.

61. Respondent did not dispute ISIS's defense that it had legitimate, non-discriminatory reasons for terminating Mr. Shirley.

62. In January 2014, the court granted ISIS's motion and assessed attorney's fees under the ADA attorney's fees statute.

63. Attorney's fees are awarded to a prevailing defendant if the plaintiff's action is frivolous, unreasonable, or without foundation, or if the plaintiff continues to litigate after it clearly becomes so.

64. The court held:

Plaintiffs' litigation of this action has ranged from inartful to unreasonable since its inception. . . . The Court agrees with ISIS' claim that Plaintiffs have "relentlessly continued their lawsuit in total disregard for the cost ISIS incurred to defend the unsubstantiated claims." . . . Despite being confronted early and often with the flaws in their claims, Plaintiffs proceeded to litigate this case and then thoroughly failed to adequately shore up their remaining ADA claim when put to their proofs at the summary judgment stage.

65. ISIS applied for approximately \$71,500 in defense fees and costs.

66. Respondent obtained from Mr. Shirley and presented to the court a financial affidavit.

67. The court concluded that the fees and costs ISIS claimed were reasonable but reduced the total by half due to Mr. Shirley's limited resources.

68. On September 23, 2014, Mr. Shirley wrote a letter to Respondent complaining about Respondent's handling of the case.

69. On October 28, 2014, the court entered judgment against Mr. Shirley and his wife for \$35,736.42, plus interest.

70. Respondent did not inform Mr. Shirley of the judgment until January 7, 2015.

71. In a February 2015 letter, Respondent told Mr. Shirley, "There were procedural criticisms for which I take responsibility." Mr. Shirley asked Respondent to pay the attorneys' fees award and refund his \$10,000.

72. Respondent reported the claim to his professional liability insurer.

73. Mr. Shirley retained counsel to assert a malpractice action against Respondent.

74. Respondent's professional liability insurer settled all claims by paying the gross sum of \$42,000 to Mr. and Mrs. Shirley.

75. The Shirleys received \$22,750, after deductions to: (a) fully resolve the outstanding claim for attorney fees; and (b) pay counsel who handled the professional liability claim. Thus, the Shirleys netted \$12,750 on their lawsuit, after subtracting the \$10,000 payment to Respondent.

COUNT TWO (File No. 15-0226/O'Brien and Campbell)

76. Shane G. O'Brien and Jeremy Campbell bought a property tax lien on certain property in Bisbee.

77. In June 2014, they hired Respondent for a flat fee of \$1,800, earned when received, to file a quiet title action.

78. Respondent's fee agreement did not contain ER 1.5(d)(3)-compliant language.

79. Respondent obtained two different local addresses for the record owner and in August 2014 sent the owner the statutory notices of intent to foreclose his right to redeem the property.

80. By statute this gave Mr. O'Brien and Mr. Campbell 180 days after a 30-day waiting period within which to file the quiet title action.

81. Both notices were returned undeliverable.

82. Respondent explained to Mr. O'Brien and Mr. Campbell that to assure that they would eventually obtain good title to the property they had to personally serve the record owner.

83. Respondent explained that courts disfavor service by publication; a default judgment following service by publication would be vulnerable to later attack on due process grounds.

84. Respondent also explained to Mr. O'Brien and Mr. Campbell that title companies do not insure buyers of judicially acquired property following service by publication.

85. *Master Financial, Inc. v. Woodburn*, 208 Ariz. 70, 90 P.3d 1236 (App. Div. 1 2004), holds that service of process by publication is sufficient, under due process principles, where a plaintiff has exercised due diligence to personally serve a resident defendant at a last known address within the state and has complied with the publication procedures in the rules of civil procedure.

86. *Roberts v. Robert*, 215 Ariz. 176, 158 P.3d 899 (App. 2007) held, in a case involving a foreclosure of two property tax liens, that "[w]hether service by publication is constitutionally sufficient will turn of the facts of the particular case," and that "[w]e do not attempt to set forth a rule that will fit each circumstance." *Id.* at 181, ¶23, 158 P.3d 904.

87. Mr. O'Brien told Respondent in August 2014 to file the quiet title action and serve the owner by publication if Respondent could not serve the owner

personally, that he wanted the case resolved immediately, and that he would question title companies regarding their underwriting practices.

88. In September 2014, Respondent prepared a Quiet Title complaint but did not file it.

89. Respondent told Complainants that "the case is moving forward." Respondent did free and paid online searches for the owner, and networked with his Bisbee contacts to try to find him.

90. Over the balance of the representation through February 2015 Mr. O'Brien and Mr. Campbell left many messages for Respondent that went unreturned, and on other occasions received only vague descriptions of what was happening in their case.

91. Mr. O'Brien asked Respondent to send him copies of all work performed, and the client file. Respondent did not comply.

92. In December 2014, Mr. O'Brien visited Bisbee and saw people living in the home on the property. Mr. O'Brien was very concerned about this and in an agitated conversation reported it to Respondent.

93. Respondent told him that evicting squatters was relatively easy and took only about two weeks.

94. Respondent agreed to file the quiet title action and serve it by publication after New Year's.

95. On January 13, 2015, Mr. O'Brien emailed Respondent complaining that he tried several times to reach Respondent by phone, unsuccessfully. He wrote:

Per our conversation on 12/22/2014, you said you would be serving the unlocated defendant(s) by publication. Is this done yet? If not, when? . . . As you know "time is of the essence." Please wrap this up as expeditiously as you can.

96. Respondent did not respond, file the suit, or serve it by publication. In March 2015, Respondent sent new statutory notices to the record owner to restart the 180-day suit-filing window.

97. Mr. O'Brien and Mr. Campbell, acting *in pro per*, sued Respondent in Cochise County Superior Court.

98. The judge dismissed the suit, holding that it raised a breach of contract issue in an amount within the exclusive jurisdiction of the justice courts.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation.

Respondent conditionally admits that his conduct violated Rule 42, ERs 1.1 (Competence, Count One), 1.2 (Scope of Representation and Allocation of Authority between Client and Lawyer, Count Two), 1.3 (Diligence, Counts One and Two), 1.4 (Communication, Counts One and Two), 1.5 (Fees and Fee Agreements, Counts One and Two), 1.15(d) (Failure to Deliver or Account for Client Property, Count Two), 1.16(d) (Terminating Representation, Count Two), 3.1 (Meritorious Claims and Contentions, Count One), ER 3.4(c) (Knowing Violation of a Court Rule, Count One), ER 8.4(d) (Conduct Prejudicial to the Administration of Justice, Count One); and Rule 54(c) (Knowing Violations of any Rule or Order of the Court, Count One).

RESTITUTION

Respondent will pay restitution of \$1,800 within 90 days as a probationary term related to Count Two.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: Suspension for 30 days, restitution, and probation as stated above. If Respondent violates any of the terms of this agreement, further discipline proceedings may be brought.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in various types of misconduct. *Standards* 1.3, Commentary. The *Standards* provide guidance with respect to an appropriate sanction in this matter. *In re Peasley*, 208 Ariz. 27, 33, 35, 90 P.3d 764, 770 (2004); *In re Rivkind*, 162 Ariz. 154, 157, 791 P.2d 1037, 1040 (1990).

In determining an appropriate sanction consideration is given to the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct, and the existence of aggravating and mitigating factors. *Peasley*, 208 Ariz. at 35, 90 P.3d at 772; *Standard* 3.0.

The duty violated

As described above, Respondent's conduct violated his duty to his client and the legal system.

The lawyer's mental state

For purposes of this agreement the parties agree that Respondent acted knowingly with respect to some violations, and negligently as to others.

The extent of the actual or potential injury

For purposes of this agreement, the parties agree that there was actual harm to clients and the legal system.

The parties agree that the following *Standards* are applicable:

ER 1.1

Standard 4.53

Reprimand is generally appropriate when a lawyer:

- (a) demonstrates failure to understand relevant legal doctrines or procedures and causes injury or potential injury to a client; or
- (b) is negligent in determining whether he or she is competent to handle a legal matter and causes injury or potential injury to a client.

ERs 1.2 and 1.3

Standard 4.42

Suspension is generally appropriate when:

- (a) a lawyer knowingly fails to perform services for a client and causes injury or potential injury to a client, or
- (b) a lawyer engages in a pattern of neglect and causes injury or potential injury to a client.

ERs 1.5(a) and 1.16(d)

Standard 7.4

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence that is a violation of a duty owed as a professional, and causes little or no actual potential injury to a client, the public, or the legal system.

ER 1.5(d)(3)

Standard 4.64

Admonition is generally appropriate when a lawyer engages in an isolated instance of negligence in failing to provide a client with accurate or complete information, and causes little or no actual or potential injury to the client.

ER 1.15(d)

Standard 4.14

Admonition is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

ERs 3.1, 3.4(c), and 8.4(d)

Standard 6.22

Suspension is appropriate when a lawyer knowingly violates a court order or rule, and there is injury or potential injury to a client or a party, or interference or potential interference with a legal proceeding.

Aggravating and mitigating circumstances

The presumptive sanction in this matter (the one applicable to the most serious misconduct; see *Standards*, "I. Theoretical Framework") is suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered:

In aggravation: Standard 9.22--

- (a) prior disciplinary offenses;
 - Dec. 2014, 13-0767, Admonition with probation (six hours of CLE in probate), ERs 1.3 and 8.4(d).
 - 2007, 06-1774, Informal Reprimand (currently, Admonition) and Probation (LOMAP assessment and compliance with ensuing recommendations), ERs 1.3 and 1.4. Respondent violated ER 1.3 by failing to diligently pursue a defense on behalf of his client. He did not try to get to trial before his client was already jailed for longer than the maximum possible punishment, consult with her family about her mental condition and defense, or visit her in jail even once to discuss her case. Respondent's failure to visit his client in jail also violated ER 1.4. Had he communicated with her, he would have known more about her mental health and done more to defend her.
 - 2007, 07-0339, ERs 1.1, 1.2, 1.3, 1.4, 1.5, 3.2, and 8.4(d), Diversion (LOMAP assessment and compliance with ensuing recommendations focusing on communication with clients, determining under what circumstances to accept clients, and providing fee agreements and/or case rejection letter
- (b) selfish motive;
- (c) a pattern of misconduct;
- (d) multiple offenses; and
- (i) substantial experience in the practice of law.

In mitigation: Standard 9.32--

- (b) absence of a dishonest motive;
- (e) full and free disclosure to disciplinary board;
- (f) cooperative attitude toward proceedings;
- (g) timely good faith effort to rectify the consequences of misconduct (To limit the effects of Respondent's suspension on his existing clients—and, frankly, to provide him with the ability to return to a viable practice—Mark Rubin (State Bar No. 007092) and Leigh Bernstein (State Bar No. 016123) have agreed to work out of Respondent's Douglas office for part of each week during his suspension. Mr. Rubin and Ms. Bernstein will associate in existing cases and provide services to existing and new clients during the suspension.)
- (c) personal problems (Respondent had a health issue that delayed his actions in Count Two to some degree);
- (j) imposition of other penalties or sanctions (the malpractice settlement in Count One);
- (k) character and reputation³;
- (l) remorse⁴.

Discussion

The parties conditionally agree that, upon application of the aggravating and mitigating factors, a 30-day suspension is the appropriate principal disciplinary term. Coupled with probation as outlined above, the parties conditionally agree that a greater sanction is not necessary to fulfill the purposes of lawyer discipline.

³ A letter from Judge Stephen M. Desens (Ret.) is attached, providing additional support for this mitigating factor. The letter is attached as Exhibit C.

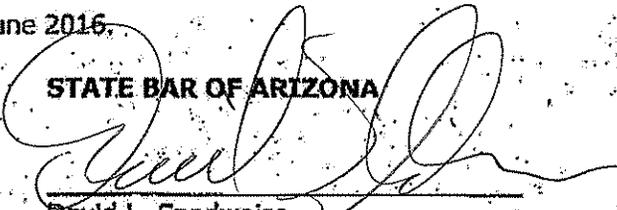
⁴ Respondent has written letters of apology to each of Russell and Donna Shirley, Shane O'Brien, and Jeremy Campbell. Copies of the letters are attached as Exhibits D-1 and D-2.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. *Peasley, supra* at ¶ 64, 90 P.3d at 778. Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit E.

DATED this 24th day of June 2016.

STATE BAR OF ARIZONA


David L. Sandweiss
Senior Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 24th day of June, 2016.


Edward W. Matchett
Respondent

DATED this 24th day of June, 2016.

Law Office of Mark Rubin PLC


Mark Rubin
Counsel for Respondent

Approved as to form and content



Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this 24th day of June, 2016.

Copy of the foregoing emailed
this 24th day of June, 2016, to:

The Honorable William J. O'Neil
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing mailed/emailed
this 24th day of June, 2016, to:

Mark Rubin
Law Office of Mark Rubin PLC
405 W. Franklin St.
Tucson, AZ 85701-8209
Email: mark@markrubinlaw.com
Respondent's Counsel

Copy of the foregoing hand-delivered
this 24th day of June, 2016, to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: 
DLS: JLB

EXHIBIT A

Report of Lynda C. Shely

Lynda C. Shely
6501 E. Greenway Parkway
Suite 103-406
Scottsdale, Arizona 85254
480-905-7237

I, Lynda C. Shely, have been asked by Mark Rubin, counsel to Edward Matchett to provide this Report With Recommendations in response to the Decision Rejecting the Agreement for Discipline by Consent in PDJ2016-9003.

A. Lynda Shely Qualifications as an Ethics Expert.

1. I have been a member of the State Bar of Arizona since 1994 (AZ Bar No. 015549) and, since that time, have devoted most of my practice to providing professional responsibility and risk management advice to lawyers. I opened my own firm in June, 2003, The Shely Firm, P.C., through which I provide only ethics and risk management advice to lawyers, as well as serving as an expert witness on ethics issues. I currently represent over 1300 law firms in Arizona and Washington, D.C.

2. I was employed by the State Bar of Arizona from 1993 to 2003 as the Director of Lawyer Ethics, with my primary responsibility as providing ethics advice to members of the State Bar, and judges. Prior to working for the State Bar of Arizona, I was in private practice in Washington, D.C., at Morgan, Lewis & Bockius from 1987 to 1991, practicing in intellectual property, franchise and antitrust litigation.

3. I am admitted to practice in Arizona, the District of Columbia, and Pennsylvania.

4. I am the 2015-2016 President of the Association of Professional Responsibility Lawyers. I currently serve on the State Bar of Arizona's Professionalism and Convention Committees, and the Maricopa County Bar Association CLE Committee. I am an Arizona delegate in the ABA House of Delegates and a member of the ABA Center for Professional Responsibility Coordinating Council.

5. I present numerous professional responsibility continuing legal education seminars around the country for the ABA, state bar associations, professional organizations, and law firms. The seminars include such topics as compliance with the Rules of Professional Conduct, avoiding unauthorized practice of law, avoiding conflicts of interest, law firm dissolutions, risk management procedures for law firms, advertising and social media ethics compliance, ethical billing practices, professional responsibility obligations in fee arrangements, legal ethics policies and procedures for law firm personnel, and professionalism issues.

6. I am a past chair of the ABA Standing Committee on Client Protection and served on the ABA Model Definition of the Practice of Law Task Force and ABA Standing Committee on Professionalism. I also was a member of the State Bar of Arizona's Multijurisdictional Task Force, which drafted the 2004 amendments to Ethical Rule 5.5, the State Bar's Ethical Rules

Review Group, which prepared the amendments to the Rules of Professional Conduct adopted in December, 2003, and the State Bar's Unauthorized Practice of Law Committee.

7. During my ten years at the State Bar of Arizona as the Director of Lawyer Ethics, I answered approximately 8000 telephonic ethics inquiries each year from lawyers and judges. I also drafted numerous written informal and formal advisory Opinions and served as staff counsel to the State Bar of Arizona Committee on the Rules of Professional Conduct. I also supervised the unauthorized practice of law (hereinafter "UPL") department and the Fee Arbitration Program, including reviewing all fee arbitration awards. I also worked with the Lawyer Regulation Department of the State Bar of Arizona in reviewing dispositions of charges against lawyers.

8. I have taught Professional Responsibility as an adjunct professor at all three Arizona law schools.

Attached hereto is a true and correct copy of my *curriculum vitae*.

B. I have reviewed the following documents:

1. Decision Rejecting the Agreement of Discipline by Consent in PDJ2016-9003 for Edward W. Matchett.
2. Prospective Client intake forms for Matchett Law Firm for family law, probate, criminal defense, civil litigation, and employment law claims.

C. I met with Mr. Matchett on Wednesday June 15, 2016 to discuss his policies and procedures for:

1. Intake and conflict checking for new clients
2. Declining new matters either outside of Mr. Matchett's expertise or due to prospective client considerations
3. Processing and docketing incoming mail and email
4. Docketing for review of all open files on a weekly basis
5. Preparation and transmission of written fee agreements
6. Communicating promptly with clients, opposing counsel and courts
7. Sending documents to clients during a representation
8. Managing discovery and other litigation deadlines
9. Terminating representations when clients fail to assist or respond
10. Use of non-engagement letters and closing letters
11. Managing workloads
12. Supervision of paralegal

D. I have been asked to provide an assessment of Mr. Matchett's compliance with

law office management protocols, to determine if they are consistent with the Arizona Rules of Professional Conduct and to make any recommendations thereto. Overall Mr. Matchett appears to follow procedures that comply with his ethical duties of competence, diligence, communication, avoiding conflicts of interest, and maintaining the confidentiality of all information related to representation of clients. I did not visit Mr. Matchett's actual office but instead met with him in Maricopa County. The recommendations set forth below are to enhance his existing procedures and should not be perceived as a criticism or failure in any area. I did not find any material omission in his stated office policies and procedures. I determined the following:

1. New Client Intake:

Mr. Matchett uses different intake forms for various practice areas, including criminal matters, general civil litigation (in particular personal injury), probate cases, family law, and employment law claims. He or his legal assistant of the past five years provides the intake form to individuals who schedule in-person meetings for a consult. Most of his representations begin with an in-person meeting. He charges a flat fee of \$50 for an hour consult.

Mr. Matchett's intake forms appear thorough and appropriate for the practice areas he handles. He does decline matters outside of the practice areas listed above.

He explained that in the past six months he has become more discerning of new prospective clients who present with unrealistic expectations or are less than candid. He also recognizes that he is a very trusting individual, which is a positive trait but also requires further factual inquiry of new clients, to assess the accuracy of the information conveyed by clients. Being able to identify and avoid potentially "difficult" clients is crucial – even when practicing in a small town where an attorney feels a civic duty to make legal services available to those in need.

Mr. Matchett provides each person he agrees to represent with a written fee agreement. He then has a paper file folder prepared in which he lists the deadlines relevant to the type of legal matter he will be handling. He provides the clients with a copy of the signed fee agreement and explains his firm policy of providing copies of all paper documents during the representation.

Recommendation 1: In order to avoid any misunderstanding by prospective clients about whether or not an attorney/client relationship forms just by meeting with Mr. Matchett, add to EACH intake sheet: "You understand and agree that this information will be kept confidential and used to check for conflicts of interest. You also agree that you are paying a one-time flat fee of \$50.00 just to consult with Mr. Matchett for one hour. Completing this form and paying the consultation fee do not create an ongoing attorney/client relationship."

Recommendation 2: Confirm that each intake form includes a question about whether any other lawyers (or document preparers) have worked on the matter and, if so, who.

2. Conflict Checking:

The office maintains paper file folders that contain lists of all current and former clients. This manual conflict checking system has worked adequately to date. Mr. Matchett and/or his legal assistant check the folders once a prospective client completes the intake forms with the names of all relevant parties and key witnesses. Either he or his legal assistant will confirm there are no conflicts.

Mr. Matchett is reviewing various case management software systems to add an electronic conflict checking system to expedite this process. He also confirmed that he understands the need to re-run conflict checks during a representation every time a new witness or party joins the case.

Recommendation 1: Purchase, install and receive training (for everyone) on a computerized integrated docketing/contact/communication tracking software in the next five months. Such law office software also will assist with automating the docketing of all deadlines, including to-do lists and soft deadlines, such as monthly file reviews..

Recommendation 2: Create and use a "new client file checklist" form (see attached) for each new file so that he does not need to manually create a checklist in each new file.

3. Docketing of Deadlines:

Mr. Matchett and his legal assistant each maintain a paper calendar on their respective desks, on which they manually write down deadlines. They compare calendars daily to assure that all deadlines have been entered. They each do this as they open and review both paper and electronic mail.

Mr. Matchett also prepares a checklist on the inside front cover of each paper file, identifying all deadlines applicable to the case. He writes down the activities that must occur on the file, based upon the type of case.

Mr. Matchett tries to review all open files each month and prepares a "to-do" list each day of client (and law office) matters that need to be handled. He creates this list from both the paper calendar entries as well as the file checklists.

See recommendations 1 and 2 above for a computerized docketing system and form for opening new client files.

Recommendation 3: Assign one person in the office to be responsible for opening mail, docketing any deadlines (whether "hard" court/statutory deadlines or "soft" client communication reminders), initialing the file checklist when a date has been entered, and initialing the back of the document when a copy has been sent to the client – either as a paper copy or electronic .pdf. Keep a written "Mail Processing" policy to identify the steps in assuring proper handling of all mail.

4. Transmission of Documents to Clients:

Mr. Matchett stated that it is his regular practice to send copies of all documents to clients, during the representation, with a cover letter that informs the client what they do or do not need to do with the document. When he is absent from the office, such as when attending the Bar Convention or an out-of-town trip, he dictates letters for his legal assistant to send. His legal assistant is aware of the importance of sending documents to clients promptly.

His assistant takes telephone messages on a message pad and provides those messages to Mr. Matchett when he returns to the office.

Recommendation 1: Use a template cover note for sending documents to clients that may be checked off with choices: "For your information, For your review, or Please call the Office to Discuss, or Please send us the requested information by ____". Use of a standard template could expedite sending documents to clients. Alternatively, with client consent, Mr. Matchett's legal assistant should scan all documents, confirm the scan is complete, and then email the document to the client's authorized email address. Transmitting copies of documents to clients should be done within 24 business hours of receipt of the document in the office. Creating a bin designated as "to send to client" and another bin "to file/has been sent to client" should facilitate proper processing of documents. While there is no ethical requirement to send documents within a certain amount of time, creating a standard routine of 24 hour processing is recommended. Prior to sending to the clients or shortly thereafter, Mr. Matchett should confirm that a response date has been docketed, if information is needed from the client or a court deadline applies.

5. Case Management Systems:

As noted above, Mr. Matchett is reviewing appropriate case management software for purchase for his practice. He understands the need to add a computerized contact/calendar/document retrieval system to make his office more efficient and assure both hard and soft deadlines are docketed. Such a system also will facilitate conflict checking. We discussed that training on such a system is crucial to assure that both he and his legal assistant understand how to use the software.

6. Workload:

Mr. Matchett practices in both federal and state courts, including criminal, family law, probate, and general civil litigation matters. He has operated his solo practice in Bisbee and Douglas for almost thirty years.

He estimates that he has approximately 50 open litigation files in the office, which is his standard caseload. This is a significant caseload for a sole practitioner, especially in multiple practice areas with varying hard deadlines. In addition to managing court docketing requirements, simply following up with that many clients to assure they are gathering documents for discovery and communicating with opposing counsel/witnesses/experts is a formidable routine.

Each day he manually prepares a "to-do" list that he also provides to his legal assistant. As he completes a task, he crosses it out. At the end of the day his assistant will confirm if he has any items to do the next day and she will then follow up until the matter is handled.

Recommendation 1: All open files should be calendared for review at least monthly, with calls to clients to keep them informed about the status of their matters. Clients should be told at the beginning of the representations about the firm's communication policies – including the clients' obligation to respond promptly to requests for information from Mr. Matchett and when to contact the office when there is new information. While Mr. Matchett confirmed that he and/or his legal assistant do contact clients regularly, a computerized docketing system that includes such soft deadlines will assure that no matters are overlooked inadvertently. With this large of a caseload, it is far more practical to use a computerized docketing system, as well as a safeguard against the office's two paper calendars being damaged/destroyed/misplaced.

Recommendation 2: Mr. Matchett should identify clients who fail to respond to his "get-in-touch" calls and terminate representation after two unsuccessful attempts to communicate. He also should notify clients at the beginning of representations that they have an obligation to promptly provide relevant information and their failure to do so will require that he withdraw. In other words, Mr. Matchett should terminate representations sooner, when a client is failing to communicate, repeatedly failing to assist in the representation, there does not appear to be a good faith basis for pursuing the matter after further factual inquiry, or factual inquiry shows the client's version of the "facts" is not supported by evidence. Again, Mr. Matchett is to be commended for his civic responsibility but should be more circumspect in which clients he continues to represent when the client fails to honestly assist in the representation.

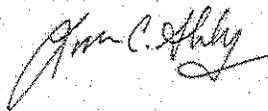
7. Compliant With and Informed About Court Rule Changes:

Mr. Matchett regularly attends continuing legal education programs in various practice areas to stay current on rule and case law changes. I personally have seen Mr. Matchett at the annual State Bar convention for at least the last dozen years. He actively concentrates on keeping up to date on relevant court procedures.

We discussed the difficulty in remaining proficient in multiple practice areas. Given that Mr. Matchett is the only private practice lawyer, full-time in Douglas, he feels responsible to the community to at least be available to consult on a variety of legal topics. Nevertheless, he recognizes the need to decline to help everyone who seeks his counsel – especially those prospective clients who demonstrate a lack of candor and/or unrealistic expectations.

I submit this Report With Recommendations under penalty of perjury, under the laws of Arizona and the United States. I reserve the absolute right to alter, amend or supplement my findings as I deem necessary or proper at any time whatsoever.

EXECUTED this ___th day of _____, 2016.

A handwritten signature in black ink, appearing to read "Lynda C. Shely". The signature is written in a cursive style with a large, looping initial "L".

Lynda C. Shely

Checklist for Opening a New Client File

Date Completed/Initials Action Follow-up Date?

- _____ **Intake Form/Contact Information in File**

- _____ **Conflict check cleared by an attorney (attorney confirmed _____)**
***No billing number will issue until conflict check is initialed by attorney and signed fee agreement received from client*

- _____ **Prospective Client Info. Entered into Database**

- _____ **Engagement/Non-Engagement Letter Sent**

- _____ **Signed Engagement Letter Received**

- _____ **Billing/File Numbers/Responsible Atty Assigned**

- _____ **Conflict Waivers Sent/Received**

- _____ **Docket All Relevant Dates (attorney confirmed _____)**

- _____ **Billing Cycle Set and bills sent**

- _____ **Monthly get-in-touch calendared (if activities more than three months out)**

- _____ **Closing Letter Sent**

- _____ **Return of unearned advance fees/disbursement trust funds**

- _____ **File review for storage**

- _____ **Calendar File Destruction date**

EXHIBIT B

Statement of Costs and Expenses

In the Matter of a Member of the State Bar of Arizona,
Edward W. Matchett, Bar No. 010057, Respondent

File Nos. 15-0088 and 15-0226

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

General Administrative Expenses for above-numbered proceedings

\$1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Staff Investigator/Miscellaneous Charges

02/05/15	PACER Invoice	\$	1.90
05/12/15	PACER Invoice	\$	31.70
Total for staff investigator charges		\$	33.60

TOTAL COSTS AND EXPENSES INCURRED **\$1,233.60**

EXHIBIT C

Hon. Stephen M. Desens (Ret.)
7569 E. Truces Pl.
Tucson, AZ 85715

June 23, 2016

Re: Ed Matchett

To whom it may concern:

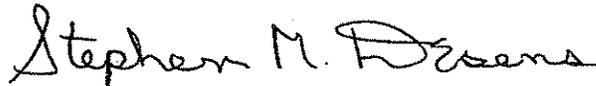
I am writing about Ed Matchett, as I recently learned about two pending attorney discipline matters. I am unaware of any details concerning the cases. However, I have known Ed Matchett for 30 years or so. At Mark Rubin's request, I am writing on his behalf.

I hired Ed in the mid-1980s when he moved to Arizona. He worked for me and my firm for a few years, before he established a solo practice. While he worked for me I had an active practice in the electrical co-operative business, and spent a substantial amount of time away from my office. Ed's work allowed me to leave without worries about the rest of my practice.

Ed practiced before me for many years, once I became a Superior Court judge. He was competent, professional, and took good care of his clients in litigated matters. I believe he also provides a service to Douglas residents, as people in Douglas have limited options for legal representation. Finally, while I am not aware of details—I am, as noted, retired—I am generally aware of the fact that Ed has contributed time and energy to both the Cochise County legal community and to the people of southern Cochise County.

Mr. Rubin has advised me that an Agreement for Discipline by Consent is being submitted to the Presiding Disciplinary Judge, and that this letter will be attached. He has my permission to use this letter in that way. Further, I am prepared to testify on behalf of Ed Matchett if a hearing takes place.

Very truly yours,



Hon. Stephen M. Desens (Ret.)

EXHIBIT D-1

Law Offices of

EDWARD W. MATCHETT

1052 G Avenue
Douglas, Arizona 85607
Phone (520) 364-3844 • Fax (520) 364-3845
matchetlaw@cableone.net

June 23, 2016

Russell Shirley and Donna M. Shirley
8678 E. Chimney Springs Dr.
Tucson, AZ 85747

Dear Mr. and Mrs. Shirley:

I am writing to apologize to you. I was not performing at my best when I represented you. I'm sorry, both for not doing my job as well as I should have, and for your being inconvenienced.

Sincerely,


Edward W. Matchett

EXHIBIT D-2

Law Offices of

EDWARD W. MATCHETT

1052 G Avenue
Douglas, Arizona 85607
Phone (520) 364-3844 • Fax (520) 364-3845
matchetlaw@cableone.net

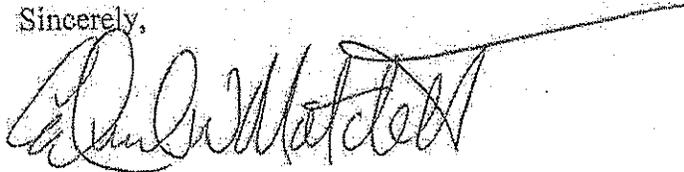
June 23, 2016

Shane O'Brien
Jeremy Campbell
3809 N. 9th Street
Phoenix, AZ 85014

Dear Mr. O'Brien and Mr. Campbell:

I am writing to apologize to you. I was not performing at my best when I represented you. I'm sorry, both for not doing my job as well as I should have, and for your being inconvenienced.

Sincerely,

A handwritten signature in cursive script, appearing to read "Edward W. Matchett", with a long horizontal line extending from the end of the signature.

Edward W. Matchett

EXHIBIT E

BEFORE THE PRESIDING DISCIPLINARY JUDGE

IN THE MATTER OF A MEMBER OF
THE STATE BAR OF ARIZONA,

EDWARD W. MATCHETT,
Bar No. 010057,

Respondent.

PDJ 2016-9003

FINAL JUDGMENT AND ORDER

State Bar Nos. 15-0088 and 15-0226

The undersigned Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent filed on _____, pursuant to Rule 57(a), Ariz. R. Sup. Ct., hereby accepts the parties' proposed agreement. Accordingly:

IT IS HEREBY ORDERED that Respondent, **Edward W. Matchett**, is hereby suspended for thirty (30) days for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 60 days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall be placed on probation for two (2) years (except as specifically stated otherwise), to include:

- participation in the State Bar's Law Office Management Assistance Program ("LOMAP") for two years, the terms of which will include but not be limited to succession/termination planning under Rule 41(i);
- a practice monitor for two (2) years, with the proviso that a process will be established which involves the practice monitor reviewing and approving of Respondent's representation in all new matters, within certain limits, to insure that Respondent: (a) does not accept engagements he cannot handle

effectively; and (b) the practice monitor can be aware of any substantial matters and provide effective assistance and oversight;

- Implementation of the recommendations included in the Report with Recommendations prepared by Lynda Shely, attached to the consent documents as Exhibit A, within 90 days of reinstatement;
- Restitution of \$1,800 in Count Two within 90 days; and
- a minimum of three (3) hours of continuing legal education (CLE) within six (6) months on Rules of Civil Procedure, focusing to the extent available on federal rules relating to motions for summary judgment.

WARNING RE FAILURE TO COMPLY WITH PROBATION

If Respondent fails to comply with any of the foregoing probation terms, and the State Bar of Arizona receives information thereof, Bar Counsel shall file a notice of noncompliance with the Presiding Disciplinary Judge, pursuant to Rule 60(a)(5). The Presiding Disciplinary Judge may conduct a hearing within 30 days to determine whether Respondent breached a term of probation and, if so, to impose an appropriate sanction. If there is an allegation that Respondent failed to comply with any of the foregoing terms, the burden of proof shall be on the State Bar of Arizona to prove noncompliance by a preponderance of the evidence.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ _____, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in

connection with these disciplinary proceedings in the amount of _____,
within 30 days from the date of service of this Order.

DATED this _____ day of June, 2016.

William J. O'Neil, Presiding Disciplinary Judge

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of June, 2016.

Copies of the foregoing mailed/emailed
this _____ day of June, 2016, to:

Mark Rubin
Law Office of Mark Rubin PLC
405 W Franklin St.
Tucson, AZ 85701-8209
Email: mark@markrubinlaw.com
Respondent's Counsel

Copy of the foregoing emailed/hand-delivered
this _____ day of June, 2016, to:

David L. Sandweiss
Senior Bar Counsel
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Email: LRO@staff.azbar.org

Copy of the foregoing hand-delivered
this _____ day of June, 2016 to:

Lawyer Regulation Records Manager
State Bar of Arizona
4201 N 24th Street, Suite 100
Phoenix, Arizona 85016-6266

by: _____